

Appln. No. 10/721,686
Docket No. 14X2129714/GEM-0106

REMARKS

Status of Claims

Claims 1-35 are pending in the application and stand rejected. Applicant has cancelled Claims 20, 30 and 31, has amended Claims 1, 9 and 22, and has added new Claim 36, leaving Claims 1-19, 21-29 and 32-36 for consideration upon entry of the present Amendment.

Applicant respectfully submits that the rejections under 35 U.S.C. §103(a) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Rejections Under 35 U.S.C. §103(a)

Claims 1, 2, 4-6, 8-10, 12, 20, 22, 24, 28, 30, 32, 34 and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen (U.S. Patent Application Publication No. 2002/0085681, hereinafter Jensen) in view of Hinton et al. (U.S. Patent No. 5,485,502, hereinafter Hinton).

Claim 13 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen in view of Hinton as applied to Claim 12 above, and further in view of Deucher et al. (U.S. Patent No. 5,220,588, hereinafter Deucher).

Claims 14-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen in view of Hinton and Deucher as applied to Claims 12 and 13 above, and further in view of Noegel et al. (U.S. Patent Application Publication No. 2002/0085682, hereinafter Noegel).

Claims 18, 19, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen in view of Hinton and Deucher as applied to Claims 12 and 13 above, and further in view of Noegel and Pearson et al. (U.S. Patent No. 6,301,324, hereinafter Pearson).

Claims 23, 25, 29, 31, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen in view of Hinton as applied to Claim 22 above, and further in view of Cenic et al. ("Dynamic CT Measurement of Cerebral Blood Flow: A Validation Study", hereinafter Cenic).

Claims 3, 7, 11, 26, and 27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Jensen in view of Hinton and Cenic as applied to Claims 1, 9, 22, and 23 above, and further in view of Kruger et al. (U.S. Patent No. 4,577,222 hereinafter Kruger).

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Applicant traverses these rejections for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as *the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs*. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Regarding Claims 1, 2, 4-6, 8-10, 12, 20, 22, 24, 28, 30, 32, 34 and 35

The Examiner remarks in the Advisory Action Paper No. 200511, continuation sheet, that "the features upon which Applicant relies (i.e. "repetitive movement of the entire cycle" or "a carrying out of the entire movement repetitively") are not recited in the rejected claims."

Applicant has amended independent Claims 1, 9 and 22 to now include the limitation of a "complete movement" and "complete 3D model".

No new matter has been added as antecedent support may be found in the specification as originally filed, such as at Paragraphs [0021] and [0025] and [0026] for example.

Dependent claims inherit all of the limitations of the respective parent claim.

In comparing the combination of Jensen and Hinton with the claimed invention as amended, Applicant finds Jensen to teach "the image processing computer 16 performs parallel operations *to repeat steps 305-340* to improve upon the 3-D patient data set...". Emphasis added.

Here, Applicant finds Jensen to teach the repetition of *steps 305-340*, and submits that such a teaching is merely the implementation of a logical do-loop that advances the motion of the receptor from its last known position to its next incremental position, such as by 5 degrees for example (see Paragraph [0054], last line), and is *not an implementation of repetitive motion of the complete movement to form a periodically refreshed complete 3D model of the object*, as evidenced by the absence of any control logic path that re-initializes the position of the image receptor at step 300 (see Figure 8, logical point "A"). In Figure 8 of Jensen, the logic path loops back to step 305 (advancement to next incremental position), not step 300 (re-initialization of receptor position).

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In the instant claimed invention, the repetitive *complete movement to form a periodically refreshed complete 3D model of the object* is directed to a carrying out of *the entire given movement repetitively*, which is substantially different from the *advancement from a last position to a next incremental position*.

Not only does Applicant find Jensen to be absent any teaching or suggestion of the entire movement being repetitively performed, but Applicant also finds Jensen to be absent any teaching or suggestion of the repetitive movement being used to form a periodically refreshed complete 3D model of the object. In fact, Applicant submits that Jensen is devoid of any discussion at all of periodically refreshing the complete 3D model of the object.

Accordingly, Applicant submits that Jensen fails to teach each and every element of the claimed invention in such a manner as to perform as the claimed invention performs, and that Hinton fails to cure the aforementioned deficiencies of Jensen (Hinton being cited for teaching movement with respect to a means for supporting an object).

Regarding Claims 3, 7, 11, 13-19, 21, 23, 25-27, 29, 31 and 33

In view of Claims 3, 7, 11, 13-19, 21, 23, 25-27, 29, 31 and 33, being dependent claims, Applicant submits that dependent claims depending from an allowable claim are also allowable, and in view of Applicant's remarks above regarding the allowability of the respective parent claims, Applicant submits that Claims 3, 7, 11, 13-19, 21, 23, 25-27, 29, 31 and 33, are now allowable, and respectfully requests notice of allowance thereof.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs, and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be traversed.

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Regarding New Claim 36

Applicant has added new Claim 36 that is indirectly dependent from Claim 1. Claim 36 is directed to unclaimed subject matter disclosed in the specification. No new matter has been added as antecedent support may be found in the specification as originally filed, such as at Paragraph [0021] for example.

In view of the remarks set forth above regarding the allowability of Claim 1, Applicant submits that Claim 36 is also allowable and respectfully requests notice of allowance thereof.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 50-2513.

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above identified Deposit Account.

Respectfully submitted,

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